
Special Commission of Inquiry into LGBTIQ Hate Crimes

Submissions on behalf of Mr Stewart Leggat

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Introduction

1. These submissions address the Supplementary submissions of Counsel Assisting dated 16 October 2023 (the supplementary submissions) concerning Mr Leggat.
 2. The supplementary submissions are of 86 pages in length. Mr Leggat is mentioned in 18 of those pages.
 3. These submissions are directed at the contents of pages 57, 59 and 60 which concern:
 - a) the decision in SF Neiwand not to focus upon gay hate assailants in respect of the deaths of Mr Russell, Mr Warren, and Mr Mattaini; and,
 - b) the failure to inform the Coroners Court of the conclusions of SF Neiwand.
- a) *the decision in SF Neiwand not to focus upon gay hate assailants...***
4. Mr Leggat commenced at the UHT in March 2017¹. Detective Chief Inspector Lehmann left UHT prior to March 2017².
 5. Mr Leggat was at UHT in the period 2017 to 2022³ (at which time there were approximately 700 unsolved homicides dating back to 1970⁴). The criteria upon reviewing unsolved homicides was the perceived “solvability” of the case⁵.
 6. It is respectfully submitted that the decisions made by Mr Leggat be considered by reference to the agony of the moment and not retrospectively (that is altogether different from the analysis - *by reference to a broader context* - of the lessons that may be learned from that decision making).
 7. As the Court held in **Derrick v Cheung [2001] HCA 48**, at [13], “Few occurrences in human affairs, in retrospect, can be seen to have been, in absolute terms, inevitable. Different conduct on the part of those involved in them almost always would have produced a different result.”
 8. It is relevant to observe (as the supplementary submissions recite at [255] and [263]) that Mr Leggat was not told why SF Neiwand had been established and did not know how Detective Sergeant Morgan and Detective Senior Constable Chebl had been chosen to participate in its conduct (although he regarded both to be suitably qualified by reason of their experience⁶).
 9. There was no challenge to that evidence.

¹ Transcript of the Inquiry, 25 September 2023, T:5937.27- 28

² Transcript of the Inquiry, 25 September 2023, T:5937.41- 45

³ Transcript of the Inquiry, 25 September 2023, T:5937.30- 33

⁴ Transcript of the Inquiry, 25 September 2023, T:5937.41- 45

⁵ Transcript of the Inquiry, 25 September 2023, T:5940.05- T:5941.22

⁶ Transcript of the Inquiry, 25 September 2023, T:5952.25- 30

10. Mr Leggat was aware that SF Neiwand was tasked with investigating the circumstances surrounding the deaths of Mr Russell, Mr Warren, and Mr Mattaini.
11. He was also aware that the focus of SF Neiwand (determined prior to his arrival at UHT) was to investigate the background of each, Mr Russell, Mr Warren, and Mr Mattaini, and their last movements⁷.
12. Plainly, that had seemed a reasonable course to Mr Leggat at the time.
13. Mr Leggat had, at all relevant times, been aware that the Taradale Inquiry had been completed by Detective Sergeant Page, that Deputy State Coroner Milledge had conducted an inquest, and that a “large number” of persons of interest had been identified⁸.
14. The UHT reviewed the material in each case file⁹.
15. In response to questions concerning the recommendation by Detective Senior Constable Taylor (approved by Detective Chief Inspector Lehmann) that NSWPF undercover operatives re-engage with the persons of interest, Mr Leggat observed that the recommendation was informed by error (and had not identified a task could usefully be undertaken) citing **R v Swaffield; Pavic v The Queen [1998] HCA 1**¹⁰.
16. The clear inference to be drawn from Mr Leggat’s evidence is that the undercover branch would not have agreed to participate in an operation in those circumstances¹¹.
17. It is relevant to observe that *R v Swaffield* and *Pavic v The Queen* concerned the right to silence. Relevantly, Swaffield had been believed by police to have been guilty of arson. When police attempted to question him, he exercised his right to silence. An undercover police officer then secured answers to questions from Swaffield that he had earlier declined to answer. At trial, that evidence was admitted by the trial judge (a decision overturned in the Court of Appeal). On the Crown appeal to the High Court, it was held that the Court of Appeal’s conclusion ought not be disturbed.
18. At [34], per Brennan J held:

There is a public interest in ensuring that the police do not adopt tactics that are designed simply to avoid the limitations on their inquisitorial functions that the courts regard as appropriate in a free society. In the particular circumstances of this case, the majority of the Court of Appeal gave great weight to that interest. Against that interest, the public interest in having Swaffield's admissions available to the Court on his trial for arson has to be weighed. Pincus JA dissented. There is much to be said for either view. This Court can determine which view ought to have prevailed but when the question touches the standards and methods of police investigation in a particular case, it is undesirable for this Court to intervene except in cases where the decision of the Court below has proceeded on an

⁷ Transcript of the Inquiry, 25 September 2023, T:5950.37- 41

⁸ Transcript of the Inquiry, 25 September 2023, T:5953.47- T:5954.17// see also, Transcript of the Inquiry, 25 September 2023, T:5967.20- 25

⁹ Transcript of the Inquiry, 25 September 2023, T:5969.31- T:5970.01

¹⁰ Transcript of the Inquiry, 25 September 2023, T:5956.18- T:5960.45

¹¹ Transcript of the Inquiry, 25 September 2023, T:5961.14- 17

erroneous principle or is otherwise manifestly wrong. In Swaffield's case, that condition is not satisfied. I would therefore dismiss the appeal in that case.

19. At [98] Toohey, Gaudron and Gummow JJ, held:

In the circumstances of this case, the admissions were elicited by an undercover police officer, in clear breach of Swaffield's right to choose whether or not to speak. The Court of Appeal was right in its conclusion and this appeal should be dismissed.

20. At [155] Kirby J held:

...In the case of covertly obtained confessions, the line of forbidden conduct will be crossed if the confession may be said to have been elicited by police (or by a person acting as an agent of the police) in unfair derogation of the suspect's right to exercise a free choice to speak or to be silent. Or it will be crossed where police have exploited any special characteristics of the relationship between the suspect and their agent so as to extract a statement which would not otherwise have been made.

21. That the persons of interest had already exercised their right to silence at the time of the recommendation would have been material to any decision to pursue such an investigative undertaking.

22. Detective Senior Constable Taylor had recommended that surveillance (telephone intercepts and listening devices) be employed¹². However, that too required careful consideration in the application of limited resources: such investigative undertakings would have generated more product for review than the UHT had available¹³. As Mr Lehmann put it, at the time that this strategy was initially under consideration, it was simply considered as a possible strategy, not necessarily a practical one¹⁴.

23. It cannot be overlooked that the resources available to the UHT were limited and there were many other investigations underway at the time of SF Neiwand¹⁵.

24. At paragraph 275 of the supplementary submissions, it is said that Mr Leggat's acceptance of the decision (made prior to his involvement) to continue SF Neiwand, notwithstanding the decision not to pursue the persons of interest, was "remarkable" given his concern about the resource constraints of the UHT. That submission should be rejected. It is apt to observe that Mr Leggat's teams had made 12 successful arrests based on cases involving the review of material in his five years at the UHT¹⁶. Mr Leggat's decision to see SF Neiwand through to fruition can hardly be described as remarkable in that context.

25. As to the conclusion at paragraph 275 of the supplementary submissions, that SF Neiwand was "substantially directed to criticising Operation Taradale and DS Page and

¹² Transcript of the Inquiry, 25 September 2023, T:5962.22- 26

¹³ Transcript of the Inquiry, 25 September 2023, T:5964.14- 41

¹⁴ Transcript of the Inquiry, 26 September 2023, T:6091.16- T:6092-07

¹⁵ Exhibit 6, Tab 515, Statement of Stewart Leggat, 15 September 2023, [39]

¹⁶ Transcript of the Inquiry, 25 September 2023, T:5945.1

rejecting the findings of Coroner Milledge”, there is no evidence that Mr Leggat was possessed of such intention or design.

26. Further, Mr Leggat observed - and the Inquiry ought to accept - that had information come to light (for example when investigating the last known movements of any of the deceased) in the nature of gay hate “it certainly would have been investigated”¹⁷.

b) *the failure to inform the Coroners Court of the conclusions of SF Neiwand*

27. Mr Leggat sincerely regrets the failure to refer the conclusion of SF Neiwand to the Office of the State Coroner.



Matthew Hutchings

23 October 2023

¹⁷ Transcript of the Inquiry, 25 September 2023, T:5968.03- 04